

<sup>3</sup> The Board notes that, following the November 25, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUES**

The issues are: (1) whether appellant has met his burden of proof to establish that he sustained stress-related conditions in the performance of duty; and (2) whether OWCP properly determined that appellant abandoned his request for an oral hearing before an OWCP hearing representative.

## **FACTUAL HISTORY**

On May 19, 2019 appellant, then a 48-year-old supervisor, filed a traumatic injury claim (Form CA-1) alleging that on April 16, 2019 he developed a migraine headache, shortness of breath, anxiety, panic, and stress when he was attacked by J.R., a carrier, and management threatened him with an investigative interview while in the performance of duty. He stopped work on May 20, 2019.

In a May 24, 2019 statement, M.I., manager, post office operations, challenged appellant's claim. She related that he alleged that he had been attacked by J.R. on April 16, 2019, however, no evidence had been provided to support his claim. M.I. noted that appellant had been working on a detail assignment as officer in charge (OIC) at the Fairfield Post Office, but that his usual job was supervisor at the Gardendale Post Office. She indicated that he and the J.R. got into a heated discussion on April 16, 2019 regarding J.R.'s attendance and performance. M.I. related that on May 2, 2019 J.R. and a union official informed her that appellant had not conducted an investigative interview on April 16, 2019 in accordance with employing establishment protocols. She stated that, as he had not conducted an investigative interview as required by employing establishment protocols, she did so on May 7, 2019 when she interviewed the city carrier and a clerk who was a witness to the verbal altercation. Since appellant was on leave, M.I. was unable to conduct an interview with him at that time. Upon his return to work on May 14, 2019 M.I. called him and requested he provide documentation regarding the April 16, 2019 incident. After providing the requested documentation, she informed appellant that an investigative interview would be scheduled with him to ensure that a thorough investigation was completed. Appellant responded by asking whether M.I. was stating that he had to be interviewed and could possibly receive corrective action. M.I. related that she then informed him that if he had not handled the verbal exchange properly and professionally than he might be subject to corrective action. Subsequently, appellant sent a text message informing M.I. that he was experiencing shortness of breath and heart pain and was going to the emergency room. The following day, he informed M.I. that his physician recommended he end his temporary assignment and return to his normal duties due to the stress of the attack.

A May 29, 2019 disability note from Dr. Andrew M. Land, a Board-certified internist, advised that appellant was currently disabled from work due to his medical condition, and would be reevaluated in one month.

By development letter dated June 11, 2019, OWCP advised appellant of the deficiencies of his claim. It informed him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. Specifically, OWCP requested information regarding the April 16, 2019 incident and the nature of appellant's relationship with J.R. It afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted a May 15, 2019 request for sick leave due to stress following an attack by J.R.

OWCP also received an undated narrative statement in which appellant detailed the discussion he had with J.R. on April 14, 2019 regarding J.R.'s request for three hours of sick leave under the Family Medical Leave Act (FMLA), the appropriate form to use for his leave request, and J.R.'s work schedule that day. Appellant explained that the discussion regarding J.R.'s route, and the time allotted to finish his route, became heated, with J.R. swearing and telling appellant nothing could be done to him because of his status as a veteran. He related that J.R. stood in his office doorway in a very threatening and leering way as if he wanted to strike appellant. Appellant stated that he was afraid for his own safety and informed J.R. that he should leave or that he was going to call the police, but J.R. related that he did not care because police had been called on him before. At this point, J.R., went to his workstation. Appellant then left his office to view J.R. at his workstation but due to his fear of J.R.'s threatening and volatile behavior, appellant did not go near J.R. He then returned to his office and called 911, informing the police that he had been threatened by J.R., and requested that J.R. be removed from the premises. Appellant related that he then called his supervisor to advise him of the danger he believed he was in. He informed J.R. that the police had been called and that he had to leave the premises. The police arrived and instructed J.R. to leave. J.R. retorted that he would not leave just because appellant told him to leave. He was again instructed to leave the premises, following which he clocked out and was escorted to his car by the police officer.

The record also contains an April 16, 2019 police report relating that a police officer had been dispatched to complete a report of appellant's allegations of harassment by J.R. Appellant related that on April 16, 2019 J.R. called to say that he might be a few hours late coming to work. When he informed J.R. he had to sign documentation regarding his late arrival on April 16, 2019 J.R. became irate and stated that he was going to work an eight-hour shift. Appellant informed J.R. that he could not work an eight-hour shift if it did not take that long to complete his route. J.R. became irate, approached appellant aggressively stating "I am going to beat the ... out of you." At this point, appellant asked J.R. to leave the building as he felt threatened, J.R. refused to leave and he called the Fairfield Police Department from his office. The responding police officer observed J.R. on a telephone and instructed J.R. to leave the premises. J.R. told appellant that he did not need him to stand around him. He then got into his vehicle and departed the premises.

In an April 18, 2019 letter, appellant directed J.R. to appear for an investigative interview regarding threatening and cursing at him.

OWCP also received a May 25, 2019 request for or notification of absence from appellant requesting continuation of pay due to stress due to the April 16, 2019 incident during which J.R. cursed appellant and threatened physical assault.

In clinic notes dated May 29, 2019, Dr. Land diagnosed anxiety with panic attacks. He noted that appellant felt anxious when mentioning the work incident. Examination findings were provided.

On June 14 and 26, 2019 appellant was seen by Dr. Land who diagnosed depression, anxiety with panic attacks, and migraine headaches.

In June 26 and 28, 2019 return to work status reports, Dr. Land found appellant disabled from work due to major depression, acute anxiety, and possible post-traumatic stress disorder PTSD due to a verbal and physical assault at work. He related that it was anticipated that appellant would be able to return to work on July 31, 2019.

In a July 17, 2019 form report, Dr. Land noted April 16, 2019 as the date the condition commenced with a duration of three to six months. He opined that appellant was unable to interact with other employees at this time. Dr. Land described appellant's condition as depression, possible PTSD, and anxiety with panic attacks due to a physical and verbal assault at work.

By decision dated July 24, 2019, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that the injury arose during the course of employment and within the scope of compensable work factors.

Following the denial of his claim OWCP received additional factual and medical documentation, which included: a July 26, 2019 Review PTSD disability benefits questionnaire form signed by Robert M. Pitts, Jr., Psy.D.; two pages of a FMLA certification form, a July 29, 2019 report from Dr. Land; and reports dated August 5 and 23, September 3 and 26, 2019 from Dr. Pitts.

In an undated statement a coworker related that on April 16, 2019 he heard J.R. using profanity towards appellant. The statement related that J.R. shouted at appellant that "you better find somebody to ... play with." The coworker also related hearing what started as a calm conversation between J.R. and appellant escalate into cursing and a shouting match. J.R. told appellant he did not care about any postal inspector and that he did not need his job. When appellant stated that he was going to call the police, J.R. stated he did not care as he would not be the first person to call the police on him.

On July 29, 2019 appellant requested an oral hearing before an OWCP hearing representative.

In an October 11, 2019 letter, OWCP's hearing representative notified appellant that a telephonic hearing was scheduled for November 14, 2019 at 3:30 p.m. Eastern Standard Time (EST). The notice included a toll-free telephone number and passcode. The hearing representative mailed the notice to appellant's last known address of record. Appellant did not appear at the oral hearing at the scheduled time.

By decision dated November 25, 2019, OWCP determined that appellant abandoned his request for an oral hearing. It indicated that he had received 30-day advance written notice of the hearing scheduled for November 14, 2019, but he failed to appear. OWCP further noted that there was no indication in the record that appellant contacted OWCP either prior to or subsequent to the scheduled hearing to explain his failure to appear. Consequently, appellant was deemed to have abandoned his request for an oral hearing.

### **LEGAL PRECEDENT -- ISSUE 1**

To establish an emotional condition causally related to factors of a claimant's federal employment, he or she must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to the condition; (2) rationalized medical evidence establishing an emotional condition or psychiatric disorder; and (3) rationalized medical

opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.<sup>4</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to a claimant's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.<sup>5</sup> However, disability is not compensable when it results from factors such as an employee's fear of a reduction-in-force, or frustration from not being permitted to work in a particular environment, or to hold a particular position.<sup>6</sup>

An employee's emotional reaction to administrative or personnel matters generally falls outside of FECA's scope.<sup>7</sup> Although related to the employment, administrative and personnel matters are functions of the employer rather than the regular or specially assigned duties of the employee.<sup>8</sup> However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.<sup>9</sup>

Perceptions and feelings, alone, are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.<sup>10</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>11</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that the case is not in posture for decision.

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<sup>4</sup> *E.S.*, Docket No. 18-1493 (issued March 6, 2019); *C.M.*, Docket No. 17-1076 (issued November 14, 2018); *Kathleen D. Walker*, 42 ECAB 603 (1991).

<sup>5</sup> *E.S.*, *id.*; *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

<sup>6</sup> *Cutler*, *id.*

<sup>7</sup> *E.S.*, *supra* note 5; *G.R.*, Docket No. 18-0893 (issued November 21, 2018); *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Matilda R. Wyatt*, 52 ECAB 421, 423 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>8</sup> *E.S.*, *supra* note 4; *C.M.*, *supra* note 4; *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005); *McEuen*, *id.*

<sup>9</sup> *Id.*

<sup>10</sup> *E.S.*, *supra* note 5; *G.R.*, *supra* note 7; *Roger Williams*, 52 ECAB 468 (2001).

<sup>11</sup> *See C.M.*, *supra* note 4; *Norma L. Blank*, 43 ECAB 384, 389-90 (1992). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

OWCP denied appellant's emotional condition claim, finding that he had not established a compensable employment factor. The Board must therefore initially review whether the alleged incidents and conditions of employment are covered employment factors under the terms of FECA.

Appellant alleged that the verbal altercation with J.R. on April 16, 2019 and management's request for an investigative interview regarding the April 16, 2019 incident resulted in stress, migraine headaches, shortness of breath, anxiety, and panic.

Appellant alleged that J.R. swore at him, verbally attacked and threatened him with physical harm when appellant attempted to discuss his leave request, attendance, and performance. He related that J.R. stood in his office doorway in a very threatening and leering way as though he wanted to strike appellant. Appellant called the police, alleging that J.R. threatened him. The Board has recognized the compensability of verbal physical threats in certain situations, but the factual aspects of such claimed threats must be established in order to establish a compensable employment factor.<sup>12</sup> The evidence of record includes a police report from April 16, 2019 wherein the responding officer noted appellant's statements to the police that J.R. became irate, and approached appellant aggressively stating "I am going to beat the ... out of you." The record also contains an undated witness statement regarding the verbal altercation, as well as appellant's statement detailing his interaction with J.R. including that he felt threatened and verbally abused by J.R.

The Board finds the evidence of record supports appellant's claim that he was verbally attacked and threatened by J.R. on April 16, 2019.<sup>13</sup> The record contains appellant's own statements, as well as a corroborating witness statement from a coworker, and the April 16, 2019 police report.<sup>14</sup> The Board has recognized the compensability of threats, when the factual aspects of such claimed threats are established.<sup>15</sup> Appellant has therefore established that the verbal confrontation on April 16, 2019 with threats of physical harm, constituted a compensable employment factor.

Appellant also attributed his stress-related condition to M.I. informing him that an investigation was being conducted regarding the April 16, 2019 incident with J.R., consistent with employing establishment protocols. An employing establishment has the right to conduct investigations if wrongdoing is suspected.<sup>16</sup> Appellant submitted no evidence of error or abuse by the employing establishment in discharging its administrative duties with regard to this

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<sup>12</sup> See *D.W.*, Docket 19-0449 (issued September 24, 2019); see also *C.O.*, Docket No. 07-1290 (issued December 6, 2007); see also *Leroy Thomas, III*, 46 ECAB 946, 954 (1995); *Alton L. White*, 42 ECAB 666, 669-70 (1991).

<sup>13</sup> See *J.Z.*, Docket No. 19-1156 (issued July 28, 2020); *M.R.*, Docket No. 17-1803 (issued February 8, 2019) (finding that a statement made directly to the claimant that he would be "among the nonliving" was a credible bodily threat directed at the claimant).

<sup>14</sup> See *M.F.*, Docket No. 17-1649 (issued July 20, 2018) (verbal disagreements without a specific bodily threat did not sufficiently affect the conditions of employment to constitute a compensable factor of employment).

<sup>15</sup> See *C.O.*, Docket No. 07-1290 (issued December 6, 2007) (defacing a time card with KKK was a compensable factor of employment); but see *Leroy Thomas, III*, 46 ECAB 946, 954 (1995) (a joking threat was not compensable).

<sup>16</sup> *R.B.*, Docket No. 19-1256 (issued July 28, 2020); *M.R.*, *supra* note 13; *D.G.*, Docket No. 17-0514 (issued May 4, 2018).

investigation. As such, he has not established that the investigation into the April 16, 2019 constituted a compensable factor of employment.<sup>17</sup>

As appellant has established a compensable factor of employment the case will therefore be remanded to OWCP to analyze and develop the medical evidence of record.<sup>18</sup> After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on the merits of this claim.<sup>19</sup>

### **CONCLUSION**

The Board finds that this case is not in posture for decision.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 25 and July 24, 2019 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 2, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>17</sup> *Id.*

<sup>18</sup> *See J.Z., supra* note 13; S.S., Docket No. 17-0959 (issued June 26, 2018).

<sup>19</sup> In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.